

position of counsel to the Board. It was a test case brought more in the interest of the Board than of Mr. Elmsfeld, and decision was hastened in order that the Board might continue in office after April 30 if the courts held to the Board's view that the law is invalid.

Another Appeal in View.

The case will be at once taken to the Court of Appeals. Mr. Untermyer will meet the Attorney-General in Albany Monday morning, and they will endeavor to persuade the Court to hear arguments on some day during the coming week, as the Court adjourns for three weeks next Friday. It is possible that, if the decision is not rendered before April 30, the New York City Excise Commissioners will try to continue to hold office until a final settlement of the controversy. In that event there will be friction between the old Commissioners and State Commissioner Lyman, but it is more probable that the old Board will issue no more licenses after April 30, unless the Court of Appeals reverses the decisions of the Supreme Court.

It was Elmsfeld's intention to open a saloon and lunch room at No. 60 Beekman street, corner of Gold street. This place was occupied by Dusek & Co. as a cafe until three months ago, when the license expired. The place is now vacant. Elmsfeld lives at No. 662 Quincy street, Brooklyn, and has been employed by liquor houses in this city.

Justice Patterson wrote the opinion of the Appellate Division which was handed down yesterday, and all the Justices concurred. Justices Patterson, Van Brunt and Barrett are Democrats. Justices Williams and Rumsey are Republicans.

What the Justices Said.

They refused to consider the contention that the law offended against justice or reason, and held that though the enactment was called "the Liquor Tax law," it is not solely a revenue measure, but is "primarily and essentially an exercise of the police power of the State" over the liquor traffic. The Justices hold that it is within the competency of the Legislature to recognize local conditions and make special provisions to meet them in a law regulating the liquor traffic; that it may exact one sum for licenses in a metropolis and other sums in smaller communities.

The want of uniformity in the penalties for violations in different parts of the State is not a defect under the Constitution, they hold.

The contention that as the bill appropriates State moneys for local purposes (two-thirds of the net receipts from liquor taxes going to the cities or towns), it should have been passed by a three-fourths vote of the Legislature, instead of a two-fifths vote, is disposed of by the decision that the money to be paid to the cities and towns has always belonged to them, and never became or will become the property of the State.

The Justices brush aside the contention that the law creates a new classification of cities, in violation of the Constitution, with the claim that the Raines law is of general application; and they also hold that, as it is general, the contention that it should have been submitted to the Mayors of cities of the first class for acceptance or rejection is untenable.

Essential portions of the decision follow in full:

The Question of Constitutionality.

The subject presented for our consideration on the appeal is that of the constitutionality of the law in question. It has been severely arraigned in argument as offending against justice and reason. It may be as unjust, unwise, oppressive and odious as the plaintiff claims, but all that does not help, in the solution of the question before us, and we have no opinion to express on that subject. The final word concerning it has been spoken by the Court of Appeals. In *Berthoff vs. O'Hilly* (24 N. Y. 210) it said: "No law can be pronounced invalid for the reason simply that it violates our notions of justice, is oppressive and unfair in its operation, or because in the opinion of some or all of the citizens of the State it is not justified by public necessity or designed to promote the public welfare. We repeat: If it violates no constitutional provisions it is valid and must be obeyed. The remedy for unjust or unwise legislation, not obnoxious to constitutional objections, is to be found in a change by the people or their representatives according to the methods provided by the Constitution."

Much of the argument against the validity of this law proceeds upon the assumption that it is fundamentally and radically a tax law. That being conceded, many of the contentions of the learned counsel for the plaintiff might prevail. If the sole or the main purpose of the enactment is merely to raise revenue by taxation for State purposes, there are features contained in this bill of inequality and diversity in the imposition of taxes and the collection of penalties that might well lead to the complete condemnation. Although by its short title it is called "the Liquor Tax law," and, although it designates the money paid for the privilege of dealing or trading in liquors in quantities of less than five gallons, a tax, yet the whole scope, purpose and intent of the law is, as its fuller title expresses, "an act in relation to the traffic in liquors and for the taxation and regulation of the same, and to provide for local option." The body of the act conforms to the objects stated in its title. A system regulating the traffic in and through the State is created and instituted. It is primarily and essentially an exercise of the police power of the State over a particular trade or business which from early times has been made the subject of State legislation. Just such a law is regularly within the po-

lice power is recognized by all of the courts of authority, and it would seem no longer open to dispute.

STATE'S POWER OVER LIQUOR TRAFFIC.

It is within the competency of the State to interfere all traffic in liquors within its boundaries. That is admitted. The Legislature, having such an extreme power, may exercise the lesser one of regulating the traffic. It may make such regulations and put such restraints upon the traffic as seem to be expedient or necessary to the safety, the welfare, or the protection of the people. In undertaking to do so by the enactment of a general law, which shall control the whole traffic in each and every part of the State, it may recognize local differences and needs, and make special provision therefor. If diversity arises therefrom in the application to particular localities of any of the incidents of the law, the Legislature is not incompetent to authorities that diversity. It is part of the general scheme. It arises from the necessity of treating local conditions and situations as they are found, and from the recognition of potent facts, such as that there are striking differences between the retail traffic in liquor in great metropolises and in a remote rural neighborhood, or even in separate parts of the same municipality, and that disproportion of the same immutability, and that disproportion must be allowed in the imposition exacted for the privilege of engaging in such traffic in each of such places.

The system now established by this act is by the express terms thereof made to supersede and take the place of all prior existing excise laws or systems throughout the whole State. It establishes an entirely new system, bringing under State control that which was theretofore under local, municipal or community jurisdictions and administration.

REGULATION, NOT REVENUE.

Taxation is but an incident, but one and that not the chief, although a necessary element of the legislation. Regulation of the traffic is the fundamental purpose of the law. The taxes are not levied upon persons nor upon property, for a license is not property except in a qualified sense, and as it is made so by the terms of operation of a statute, and the taxes are, and are declared to be, "excise taxes upon the business of trafficking in liquor," and hence a mere incident to the regulation of that business. It is all within the police power of the State, exercised for the supposed general welfare, and the power to regulate must of necessity include the power to license or tax.

Nor does the want of uniformity of punishment for the violation of the penal provisions of the act render it unconstitutional. The same offense, punishable under a general law, may be punished with more severity in one part of the State than in another.

Regarding as we do this act as one constituting inherently and essentially an exercise of the police power of the State, we are brought to the consideration of the particular objections taken to it, as violating the provisions of the Constitution of the State of New York.

THE DIVISION OF THE PRODUCT.

It seems to us indisputable that the two-thirds of the net products of the taxes, fines and penalties (paid to the town or city) could not be regarded in any sense as State moneys. They are not so designated in the act. On the contrary, they are expressly and specifically declared to belong to the town or city in which the traffic is carried on. The anterior rights of localities as theretofore existing were done away with. The act with regard to the two-thirds of the revenue simply recognizes that there were such rights and professes to provide anew for them with some measure of justice. At no period of time do the two-thirds belong to the State. The two-thirds part does not become money of the State simply because the State's agent collects it through and by means of the State machinery.

Second—It is further objected by the relator that the act under consideration classifies cities in a different way than the Constitution does, and that for that reason it violates section 2 of Article 12 of the Constitution. The circumstances which led up to the adoption of it are well known. It had not been unusual for laws to be passed seriously affecting the local interests and property of cities without notice to the authorities of such cities and without any opportunity for them or the inhabitants to be heard upon the subject. That had grown to be a great crying evil, and the people of the State were endeavoring to remedy it. But it must be noticed that the classification has reference only to laws relating to the property, affairs or government of cities, and it is only with reference to that kind of laws that the classification is effectual or material. The act of 1890, in question, is not one that can be said to relate to either of those things. As we have before stated, it is a general law in the fullest sense of that word, having regard to the liquor traffic throughout the whole State, and contains such particular provisions as refer to special localities as the conditions of those localities seem to require. In no sense does it relate to the property, affairs or government of the city. It is purely a matter of State government, and is a general law upon that subject, and is not, as we think, at all within the provisions of the Constitution.

WHAT IS A SPECIAL LAW?

A provision in a general law cannot be said to be a special city law simply because it makes some provision with regard to the inhabitants of the city different from that established for other portions of the State, unless it contains something relating to the government of that city separate and distinct from the general provision relating to the Government of the State. This law contains no such provision. The nearest approach to one is that it abolishes the existing Excise Commissions; but that abolition results from the total extinction of an entire excise system and the creation of another and different one—one including the whole State and embracing in a single scheme everything necessary to the establishment and operation of a complete system, even to the varying details required by different conditions of different localities. It is no more a special city law because it abolishes the office of Excise Commissioner of the city of New York than would be a law abolishing the office of Governor.

Third—The further contention is made that the law should have been submitted to the Mayors of cities of the first class. Much of what we have said with reference to the objection last considered applies equally to this, and it is unnecessary to repeat it. The law is not a special city law as to cities of the first class; it does not relate to the government, property or affairs of a particular city, and was not such a measure as under the Constitution should have been submitted in the manner claimed by the relator's counsel.

The other and final adjudication appealed from must be affirmed with costs.

Mr. and Mrs. Best Sail for Europe. Mr. and Mrs. Albert Best and Miss Best will sail on the *Pulda*, of the North German Lloyd line, to-day, intending to travel in Italy until it is time for Mr. Best to make his usual business visits in the interests of his firm, *Best & Co.*, to Paris and London. They will leave the last of June.

CLIMAX OF OPERATIC GLORY IS REACHED.

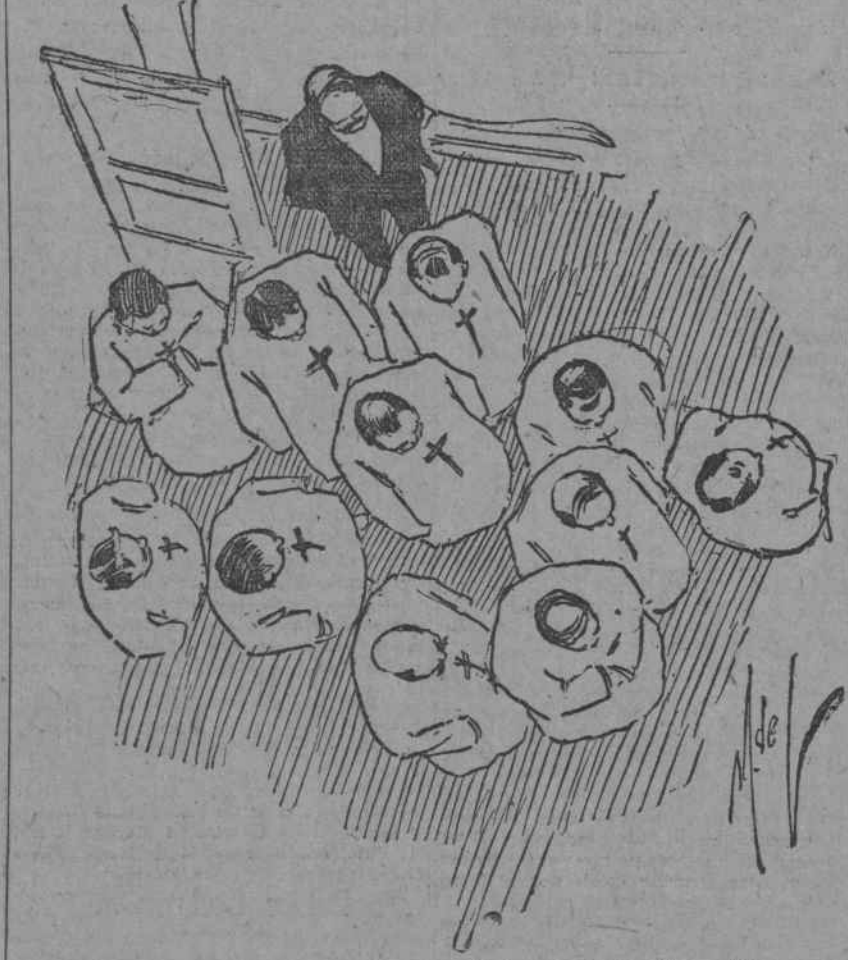
All the Stars Shine Together in One Grand Constellation on the Stage.

Purely for Love of Abbey and Grau a Chorus Which \$20,000 Could Not Hire Sings Freely.

GREAT SUCCESS OF THE BENEFIT.

More People Than the Opera House Ever Held Before Hear Melba, Calve, Scalchi, the De Reszkes, Maurel and all the Others Sing.

It was gala night at the opera. As a testimonial of their fondness for Henry B. Abbey and Maurice Grau, to whom New York is indebted for all its successful grand opera, the members of the Metropolitan Opera Company gave their services free last night for the most remarkable performance that has ever been chronicled in



The Monks Chorus as Seen from High in the Flies.

the history of music. The prices for seats, boxes and even standing room had been doubled. Nevertheless the building was filled, crowded, jammed as it had never been before. Not only was every legitimate sitting and standing space filled, but the wings and flies were thronged with people who had been lucky enough to get upon the stage.

And behind the scenes! It was a night of high pressure and excitement upon the stage. There was to be an act from each of five operas, a scene from a sixth and the "Soldiers' Chorus," and only four hours to get through with them.

All the chorus girls, all the stage hands, Mr. Grau, and they came out and bowed, and then Jean de Reszke presented them with an address, which had been signed by all the members of the company, and in which they thanked those gentlemen for all their kindness and courtesy to the company, and then more flowers came up and everybody began applauding all over again.

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Reszke, in the guise of Radames in *Aida*; his brother, Edouard, as Mephistopheles; Maurel, as Falstaff; Mme. Nordica, as Aida; Mme. Saville, as Mistress Ford; Miss Lola Beeth, as Anne, also in "Falstaff," and Mme. Scalchi, as Dame Quickly.

Had these people been paid for their services, this chorus alone would have cost \$25,000.

At the entrance of the procession the audience fairly rose to its feet and shouted with enthusiasm. But all the applause and all the noise was drowned by the chorus. The rousing song swept all before it, and a thrill shot through the souls of all who heard it.

FLOWERS, KISSES AND APPLAUSE.

It was a motley scene, such as no opera-goer had ever beheld before, yet there was a sublimity about it that deprived it of all suggestion of the grotesque. Even the stage manager, frankly waving the flag in the rear of the group, seemed to be a fitting part of the scene. Of course, it had all been carefully planned; nevertheless, it seemed so spontaneous and it was so hearty and so grand that, at its close, a wave of enthusiastic delight swept through the whole building. And then the applause! And the shouts of "Bravo!" the cheers! and the flowers, and the embraces, and the throwing of kisses, and more encore! It was one of those scenes that a man will witness for a moment, think of for a week, and remember forever, but can never describe.

The audience shouted for Mr. Abbey and

of the night were amazingly interesting. Most of the singers left their dressing rooms long before it was time for them to appear and wandered around the stage. Calve, dressed as Carmen, and Maurel, dressed as Falstaff, stood side by side listening with rapt attention to Melba, who was singing the mad song from *Lucia*. And when the applause broke forth they, too, clapped their hands and cried "Bravo!"

As each of the prima donnas came off the stage, staggering under a load of bouquets, the chorus girls made a wild scramble for them and begged for a flower. Calve, Melba and Nordica each distributed an entire bouquet among the girls and gave bouquets to the stage hands, the singers and everybody else who looked as if he wanted one. It was a gala night, and everybody felt happy.

The variance point of the wings also afforded a striking view of the audience. It seemed like an immense sea of faces set in brilliant colors, among which flashed many jewels, and upon it all, when the curtain was down, shone a powerful light. Viewed from this point it was a very brilliant gathering, and when it applauded the sound came like the breaking of a mighty wave upon a cliff.

From the critical standpoint there is nothing to say of the performance, save that all the singers were at their best, the acting was what it had been on previous nights and the tour ensemble was entirely unprecedented.

The evening began with Act IV. from "Favorita." After that came Act III. from "Carmen," with Calve, Mme. Bauermeister, Mme. Frances Saville and Ancona. Then there was Act II. from "Falstaff," with Maurel, Lola Beeth and Scalchi in the leading parts.

The mad scene from "Lucia," sung by Melba, came next. This was followed by the Soldiers' Chorus, and such a chorus was never heard before. Here are the names of the stars who sang in it:

Mmes. Melba, Calve, Saville, Lola Beeth, Truhmann, Marie Engle, Scalchi, Mantelli, Oltzka, Kitzu, Bauermeister, Van Cauteau and Nordica.

Mr. Jean and Edouard de Reszke, Piancon, Cronin, Rudiano, Lubert, Capoul, Mauguiere, Kaschmann, Ancona, Campanari, De Vries, Arimondi, Castelnary, Carbone, De Vascetti, Vivaldi, Vanni de Longpre, Rinaldini and Maurel.

Then came Act III. from "Aida," with Nordica and Jean de Reszke, and finally, a fitting close to such a great night, the famous trio from "Faust," sung by Melba and the brothers De Reszke.

MORTON FORCES PLATT TO RETREAT.

Continued on Second Page.

be considered first. As for the division of the Commission as regards locality, I think that should be arranged according to population. Most of the members to be appointed should come from New York City.

NO THEORISTS UPON IT.

Ashbel P. Fitch, only practical, disinterested, non-partisan citizens should be members of the Commission to adopt a charter for the Greater New York. The Commissioners should be selected from our ablest lawyers and business men, and should have a practical and not a theoretical knowledge of the governmental affairs of the cities and towns that are to form the consolidated city. The people will have no confidence in the Commission if politics are considered in its make-up.

ONLY THE BEST CITIZENS.

Ex-Comptroller Theodore W. Myers, Governor Morton will make a big mistake if he does not select Commissioners of known integrity, ability and experience in public affairs. He should nominate the very best of our citizens, irrespective of party or faction affiliation. There should be several eminent lawyers on the Commission, but I would not advise the selection of too many legal lights. The social, economic, governmental, business and commercial interests of this city should be ably represented on the Commission. But only citizens who are practical in their ideas should be Commissioners, and they should be citizens of experience in the matters that will be brought before them. It would be ridiculous to nominate theorists and citizens who have never taken any interest in municipal affairs.

ONLY LAWYERS FOR HIM.

Ex-Comptroller Edward V. Loeu may differ from most people, but I think the Commissioners should all be lawyers, and lawyers who have high standing in constitutional and municipal law. The Commissioners will be required to consolidate three cities, and it seems to me that their work will be of a judicial character. I will say, however, that I predict that the realization of the proposed Greater New York will result in an outrageous tax rate for this city. The city of New York will suffer from the consolidation. I really look upon consolidation as proposed by the bill now before the Governor as a blow at the prosperity of our beloved city.

GREEN SHOULD SUGGEST.

Charles W. Dayton: I should think that the Commission ought to be made up of men who have an intimate knowledge of municipal affairs and some education on the subject of taxation. I believe that Mr. Andrew H. Green should be consulted as to the appointments. Of course, I think that the Commission should be non-partisan. It is a

Sales Talk

Hood's Sarsaparilla has enjoyed public confidence and patronage from the beginning to a greater extent than was ever accorded any other proprietary medicine, because it possesses greater merit and produces greater cures than any other. It is not what we say, but what Hood's Sarsaparilla does, that tells the story. These are facts easily proven, if you are interested, by asking any dealer in the United States. All advertisements of Hood's Sarsaparilla, like Hood's Sarsaparilla itself, are honest. We have never deceived the public, and this, with its superlative medicinal merit, is why the people have such abiding confidence in it, and buy it almost to the exclusion of all other Sarsaparillas and blood purifiers.

Hood's Sarsaparilla

Is the One True Blood Purifier. All druggists sell it. Hood's Pills are purely vegetable, reliable and beneficial. 25c.

Watching the Singers from Aloft.

matter into which partisanship has no right to intrude.

BUSINESS, LAW, POLITICS.

John C. Sheehy, leader of Tammany: The Commission that is to draw up the Greater New York charter should be composed of men who are thoroughly familiar with the needs of the various localities that are to be consolidated. Both business and political considerations should come into their selection. There should be some good financiers on the Commission and some good lawyers. The financial and legal questions are the most important ones to be considered in drawing up the new charter.

HOME RULE—ANTI-PLATT.

Dr. Charles H. Parkhurst: Personally, I am not opposed to a Greater New York, but I am opposed to the way the bill has been introduced through the Legislature. In my opinion the bill has been passed over the official vetoes of the Mayors of the two cities most interested in defense of the spirit of home rule. I am interested to observe the large amount of interest manifested all over the State in this theory of home rule for cities. The way the bill has been pressed through at the instigation of one man and his accomplices is really an open defiance of the wisdom of the people of the State. Mr. Platt and the Legislature which has sold its soul to him has put this bill through in spite of the citizens of Brooklyn and New York. Of course, I cannot tell what disposition Governor Morton will make of the measure, but I am told that he is under Mr. Platt's thumb. There is a personal interest growing up in this State on the subject of home rule. And, after all, the present situation is a farce, the citizens of the larger cities in the State with an impressive official lesson. This spirit of home rule is, I learn by correspondence, especially strong in the city of Buffalo. Yet the Legislature acts directly contrary to public opinion and offers no apology. My objections to the bill are clearly expressed in a protest sent to the Governor to-night.

SOLD ITS SOUL TO PLATT.

Dr. Parkhurst Attacks the Legislature for Passing the Greater New York Bill.

"The Legislature of the State of New York has sold its soul to Thomas C. Platt, and I am told that Governor Morton is also under the thumb of the 'Easy Boss.'"

Such was the warning which Dr. Parkhurst paid his respects to the Greater New York bill yesterday. In the afternoon he presided over a meeting of the Executive Committee of the City Vigilance League. At this meeting, which was held in the rooms of the league, No. 105 East Twenty-second street, Dr. Parkhurst prepared a protest against the Greater New York bill. A copy of this was mailed to Governor Morton late in the evening.

REV. DR. PULLMAN RETRACTS HIS WORDS.

Continued from First Page.

part in such a performance as depicted in said newspaper notices must needs be a person of low moral perception. At that time I knew absolutely nothing of Mr. May beyond his relation to that performance, and it was my deliberate purpose that my remarks should be impersonal.

I have from the first regretted exceedingly that my words were connected with the actress. It was a great satisfaction to me that Mr. May repudiated the aforesaid article as a truthful description of her performance, and if I have done her any injury or injustice by assuming that the article was published with her consent, or used any expression which in any degree may have reflected upon her private character, I regret it. And this has been my attitude in this case from the first.

(Signed.) JOSEPH PULLMAN.

Dr. Pullman and all his family refuse to be interviewed.

HER ADVICE TO CLERGYMEN. Mr. May has replied to Dr. Pullman's letter by the following:

New York, April 24, 1896.

Rev. Joseph Pullman, Bridgeport, Conn. Sir—Your retraction of the reckless and un-

Christian charges against my moral character has been submitted to me, and is accepted. I have been made aware of the fact that, since the utterance of those awful words against me, a wife and mother, afflictions have befallen the sacred circle of your home, and out of a spirit of charity, which you did not see fit to extend to me, I do not desire to add more to your burden by the assurance which a continuance of my suit would naturally cause you and yours. I therefore accept your retraction as sufficient.

But I feel that I can, without impropriety, suggest that it is my hope that the course I have pursued in this matter, may, at least, be the means of deterring clergymen, who think less in the pulpit of the Gospel of Christ than notoriety and self-aggrandizement, from making unprovoked and malicious attacks upon actresses, of whom they know absolutely nothing. Before directing such language against any lady, which it seems no gentleman could, you might ask, "How would I regard these same words if spoken of my mother, wife or daughter, by any one, especially a minister of the gospel?"

If you were a man, clergyman though you be, you would resent it with all the energy of the champion of a righteous cause. I do not intend these remarks as personal, but as general in their application.

When we meet on that last awful day before Him who will judge us all, He will decide between us and right the wrong which you have done me, but which it is beyond your power to undo. I am, respectfully,

MILIE JANE MAY.

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Two Foundlings Picked Up.

A male child about one month old was found by Dora Gebhardt in the hallway of the tenement at No. 72 Suffolk street last night. The babe was transferred to Bellevue Hospital.

A fourteen-day-old baby was found in the basement of No. 40 West Fifty-fourth street last evening by Policeman Carlin, of the West Sixty-eighth Street Station. The wife was removed to the Bellevue Hospital. It was very pretty and a female.

\$1,000 for a Woman

OR

\$1,000 for a Girl

WHICHEVER IT MAY HAPPEN TO BE,

WHO GUESSES BEST the Mystery in

"THE MILL OF SILENCE,"

Which begins publication in the JOURNAL Monday next, April 27. There is the sum of

\$3,000 for Women and Girls

In the entire List of Prizes offered for the solution in advance of the publication of the final chapter.

FOR THE BEST SOLUTION,	\$1,000
FOR THE SECOND BEST SOLUTION,	500
FOR THE THIRD BEST SOLUTION,	300
FOR THE FOURTH BEST SOLUTION,	100
FOR THE FOUR NEXT BEST SOLUTIONS (\$50 EACH),	200
FOR THE EIGHT NEXT BEST SOLUTIONS (\$25 EACH),	200
FOR THE 140 NEXT BEST SOLUTIONS (\$5 EACH),	700
MAKING A TOTAL OF 156 PRIZES AWARDED,	\$3,000

No condition of term of subscription to THE JOURNAL is imposed. Guessers must be women and girls, and necessarily they must be readers of THE JOURNAL, but they may read the story in THE JOURNAL taken by any member of the family, and need not be regular subscribers themselves in order to enter the competition.

FIRST INSTALMENT MONDAY NEXT IN **The Journal.**